Court No. 2

Civil Writ Petition No. 557 (M/B) of 2002

Smt. Devki Arya ……. Petitioners.

Versus

State of Uttaranchal and another …… Respondents.

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Hon'ble P.C. Verma, J.
Hon'ble M.M. Ghildiyal, J.

Heard learned counsel for the petitioner.

The petitioner has become overage. Now he has come with the prayer that the State Government may be directed to increase the age limit as the delay occurred on account of inaction in advertising the posts. The advertisement provided the upper age and lower age limit for making the candidates to be eligible. The selection is to be made as per terms and conditions as the subsequent events and amendments under the rules cannot be taken into. Reliance is to be made in the case of **N.T. Devin Katti and others versus Karnataka Public Service Commission and others,** reported in 1990 (3) Supreme Court Cases, Page 157, wherein the apex Court has held as under:-

> *"Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing rules and government orders. Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent.*

The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection is accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature." ……..……..

"In Y.V. Rangaiah v. J. Sreenivasa Rao, (reported in 1983 (3) SCC 284) similar question arose relating to recruitment by promotion. The question was whether promotion should be made in accordance with the Rules, in force on the date the vacancies occurred or in accordance with the amended Rules. The Court observed as under: (SCC p.289, para 9)

> *"The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and snot on the Statewide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."*

The same view was taken in P. Ganeshear Rao v. State of Andhra Pradesh (reported in 1988 Supp. SCC 740). Similar view was taken in A.A. Calton v. Director or Education (reported in 1983 (3) SCC 33). It is a well accepted principle of construction that a statutory rule or government order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. Where proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules and government orders and any amendment of the rules or the government order pending the

selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended Rules or the amended government orders, issued in exercise of its statutory power either by express provision or by necessary intendment indicate that amended Rules shall be applicable to the pending selections. See P. Mahendran v. State of Karnataka (reported 1990 (1) SCC 411.)"

In view of the aforesaid settled legal position, the petition lacks merit and is hereby dismissed.

(P.C. Verma, J.) **(M.M. Ghildiyal, J.)**

13.12.2002
P.Singh